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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/316,725 05/21/99 MUNOZ

M P-5502

EXAMINER

TM02/1029

WILLIAM T RIFKIN  
RUDNICK & WOLFE  
P O BOX 64807  
CHICAGO IL 60664-0807

DIXON, T

ART UNIT

PAPER NUMBER

2161

DATE MAILED:

10/29/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/316,725

Applicant(s)

MUNOZ ET AL

Examiner

Thomas A. Dixon

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 September 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specifically, the referenced articles on page 3, lines 10-11 and page 4, lines 10-11 have not been considered.

### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, line 1 contains a period followed by what appears to be a second claim, which renders the claim indefinite.

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4. Claims 8, 9, 10, 13, 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, a claim may not depend from itself.

5. Claims 11,12,13,14,15, 18,19, 20, 21 are rejected as depending from a rejected base claim.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 1-11, 16, 19-20 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Specifically, the claims do not produce a useful tangible and concrete product, it is merely the manipulation of data with no output.

7. Claims 22-23 are rejected as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. Claim 1 rejected under 35 U.S.C. 102(e) as being anticipated by LeVander (6,216,108).

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As per Claim 1.

*LeVander ('08)* ~~Isherwood ('219)~~ discloses:

- a) establishing a list of tasks involved in said work process wherein at least one of the said tasks involves execution by a human operator, see figure <sup>5</sup> 8 (206);
- b) calculating the expected duration of said tasks by said human operator using an operator independent method of task time measurement, see (210);
- c) establishing a first cost component of each task as a function of the expected time of execution of said task and a cost per unit of time for said human operator, see (218);
- d) establishing a second cost component of each task dependent on non-labor costs of the process, a portion of each non-labor cost being apportioned to said task as a function of the time of execution of said task by said human operator, machine operating time or other relative consumption of a resource, see (210, 216);
- e) summing the first and second components for the task to establish a task cost independent of the efficiency of the human operator, see (214, 218).

As per Claim 4.

*LeVander ('08)* discloses all the limitations of Claim 1.

*LeVander ('08)* further discloses the activities of a service business, see figure 2 (10).

As per Claim 6.

*LeVander ('08)* discloses all the limitations of Claim 1.

*LeVander ('08)* further discloses the activities are performed by two or more different human operators, see figure 2 (54).

As per Claim 7.

*LeVander ('08)* discloses all the limitations of Claim 1.

*LeVander ('08)* further discloses

- f) summing the costs of the tasks in said process to give a process cost, and utilizing the process cost to determine the cost of the work process, see figure 5 (224).

As per Claim 16.

*LeVander ('08)* discloses all the limitations of Claim 1.

*LeVander ('08)* further discloses the utilization ratios are used for the purpose of reallocating work from over-utilized operators to under-utilized operators, see column 8, lines 57-62.

As per Claim 22.

*LeVander ('08)* discloses all the limitations of Claim 1.

*LeVander ('08)* further discloses the difference between the calculated time to complete a task independent of the operator and the actual time taken by the operator is used to establish a risk profile for the business, see column 11, lines 6-31.

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As per Claim 23.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) further discloses a difference between the calculated time to complete a task independent of the operator and the actual time take by the operator is used to establish hidden liability of unperformed work, see column 11, lines 6-31.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over LeVander (6,216,108) in view of Isherwood (5,918,219).

As per Claim 2.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) does not disclose operator independent method of task time measurement is a predetermined motion time system.

Isherwood ('219) teaches the independent task time measurement is a predetermined motion time system, see figure 5 (503) for the benefit of accurate job cost estimating.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the predetermined motion time system of Isherwood ('219) in combination with the invention of LeVander ('108) for the benefit of accurate job cost estimating.

### ***Prior Art Made of Record***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

JP 2000276381 is the closest foreign art which discloses a task execution estimator, but does not disclose all the limitations of the claims.

Scott et al, is the closest non-patent literature, but does not disclose all the limitations of the claims

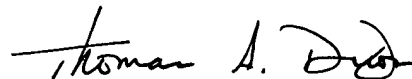
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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7293 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Thomas A. Dixon  
Examiner  
Art Unit 2161

October 25, 2001